

LEGISLATURE OF NEBRASKA

NINETY-NINTH LEGISLATURE

SECOND SESSION

LEGISLATIVE BILL 562

FINAL READING

Introduced by Janssen, 15; Mines, 18; Redfield, 12

Read first time January 18, 2005

Committee: General Affairs

A BILL

1 FOR AN ACT relating to the Nebraska Liquor Control Act; to
2 amend sections 53-103, 53-123.04, 53-123.11, 53-124.11,
3 53-124.12, and 60-6,211.08, Reissue Revised Statutes of
4 Nebraska; to redefine alcohol to include the gaseous
5 form; to permit removal of opened bottles of wine from
6 licensed premises; to permit a farm winery to obtain
7 a special designated license and a catering license;
8 to eliminate a reporting requirement; to harmonize
9 provisions; to repeal the original sections; and to
10 outright repeal section 53-167.04, Reissue Revised
11 Statutes of Nebraska.

12 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 53-103, Reissue Revised Statutes of
2 Nebraska, is amended to read:

3 53-103 For purposes of the Nebraska Liquor Control Act,
4 unless the context otherwise requires:

5 (1) Alcohol means the product of distillation of any
6 fermented liquid, whether rectified or diluted, whatever the origin
7 thereof, and includes synthetic ethyl alcohol and alcohol processed
8 or sold in a gaseous form. Alcohol does not include denatured
9 alcohol or wood alcohol;

10 (2) Spirits means any beverage which contains alcohol
11 obtained by distillation, mixed with water or other substance
12 in solution, and includes brandy, rum, whiskey, gin, or other
13 spirituous liquors and such liquors when rectified, blended, or
14 otherwise mixed with alcohol or other substances;

15 (3) Wine means any alcoholic beverage obtained by the
16 fermentation of the natural contents of fruits or vegetables,
17 containing sugar, including such beverages when fortified by the
18 addition of alcohol or spirits;

19 (4) Beer means a beverage obtained by alcoholic
20 fermentation of an infusion or concoction of barley or other grain,
21 malt, and hops in water and includes, but is not limited to, beer,
22 ale, stout, lager beer, porter, and near beer;

23 (5) Alcoholic liquor includes alcohol, spirits, wine,
24 beer, and any liquid or solid, patented or not, containing alcohol,
25 spirits, wine, or beer and capable of being consumed as a beverage

1 by a human being. Alcoholic liquor also includes confections or
2 candy with alcohol content of more than one-half of one percent
3 alcohol. The act does not apply to (a) alcohol used in the
4 manufacture of denatured alcohol produced in accordance with acts
5 of Congress and regulations adopted and promulgated pursuant to
6 such acts, (b) flavoring extracts, syrups, medicinal, mechanical,
7 scientific, culinary, or toilet preparations, or food products
8 unfit for beverage purposes, but the act applies to alcoholic
9 liquor used in the manufacture, preparation, or compounding of such
10 products or confections or candy that contains more than one-half
11 of one percent alcohol, or (c) wine intended for use and used by
12 any church or religious organization for sacramental purposes;

13 (6) Near beer means beer containing less than one-half of
14 one percent of alcohol by volume;

15 (7) Original package means any bottle, flask, jug, can,
16 cask, barrel, keg, hogshead, or other receptacle or container
17 used, corked or capped, sealed, and labeled by the manufacturer of
18 alcoholic liquor to contain and to convey any alcoholic liquor;

19 (8) Manufacturer means every brewer, fermenter,
20 distiller, rectifier, winemaker, blender, processor, bottler,
21 or person who fills or refills an original package and others
22 engaged in brewing, fermenting, distilling, rectifying, or bottling
23 alcoholic liquor, including a wholly owned affiliate or duly
24 authorized agent for a manufacturer;

25 (9) Nonbeverage user means every manufacturer of any

1 of the products set forth and described in subsection (4) of
2 section 53-160, when such product contains alcoholic liquor, and
3 all laboratories, hospitals, and sanatoria using alcoholic liquor
4 for nonbeverage purposes;

5 (10) Manufacture means to distill, rectify, ferment,
6 brew, make, mix, concoct, process, blend, bottle, or fill an
7 original package with any alcoholic liquor and includes blending
8 but does not include the mixing or other preparation of drinks for
9 serving by those persons authorized and permitted in the act to
10 serve drinks for consumption on the premises where sold;

11 (11) Wholesaler means a person importing or causing to be
12 imported into the state or purchasing or causing to be purchased
13 within the state alcoholic liquor for sale or resale to retailers
14 licensed under the act, whether the business of the wholesaler is
15 conducted under the terms of a franchise or any other form of an
16 agreement with a manufacturer or manufacturers, or who has caused
17 alcoholic liquor to be imported into the state or purchased in
18 the state from a manufacturer or manufacturers and was licensed
19 to conduct such a business by the commission on May 1, 1970, or
20 has been so licensed since that date. Wholesaler does not include
21 any retailer licensed to sell alcoholic liquor for consumption off
22 the premises who sells alcoholic liquor other than beer or wine
23 to another retailer pursuant to section 53-175, except that any
24 such retailer shall obtain the required federal wholesaler's basic
25 permit and federal wholesale liquor dealer's special tax stamp.

1 Wholesaler includes a distributor, distributorship, and jobber;

2 (12) Person means any natural person, trustee,
3 corporation, partnership, or limited liability company;

4 (13) Retailer means a person who sells or offers for sale
5 alcoholic liquor for use or consumption and not for resale in any
6 form except as provided in section 53-175;

7 (14) Sell at retail and sale at retail means sale for use
8 or consumption and not for resale in any form except as provided in
9 section 53-175;

10 (15) Commission means the Nebraska Liquor Control
11 Commission;

12 (16) Sale means any transfer, exchange, or barter in any
13 manner or by any means for a consideration and includes any sale
14 made by any person, whether principal, proprietor, agent, servant,
15 or employee;

16 (17) To sell means to solicit or receive an order for, to
17 keep or expose for sale, or to keep with intent to sell;

18 (18) Restaurant means any public place (a) which is kept,
19 used, maintained, advertised, and held out to the public as a place
20 where meals are served and where meals are actually and regularly
21 served, (b) which has no sleeping accommodations, and (c) which
22 has adequate and sanitary kitchen and dining room equipment and
23 capacity and a sufficient number and kind of employees to prepare,
24 cook, and serve suitable food for its guests;

25 (19) Club means a corporation (a) which is organized

1 under the laws of this state, not for pecuniary profit, solely
2 for the promotion of some common object other than the sale or
3 consumption of alcoholic liquor, (b) which is kept, used, and
4 maintained by its members through the payment of annual dues, (c)
5 which owns, hires, or leases a building or space in a building
6 suitable and adequate for the reasonable and comfortable use and
7 accommodation of its members and their guests, and (d) which
8 has suitable and adequate kitchen and dining room space and
9 equipment and a sufficient number of servants and employees for
10 cooking, preparing, and serving food and meals for its members
11 and their guests. The affairs and management of such club shall
12 be conducted by a board of directors, executive committee, or
13 similar body chosen by the members at their annual meeting, and
14 no member, officer, agent, or employee of the club shall be paid
15 or shall directly or indirectly receive, in the form of salary or
16 other compensation, any profits from the distribution or sale of
17 alcoholic liquor to the club or the members of the club or its
18 guests introduced by members other than any salary fixed and voted
19 at any annual meeting by the members or by the governing body of
20 the club out of the general revenue of the club;

21 (20) Hotel means any building or other structure (a)
22 which is kept, used, maintained, advertised, and held out to
23 the public to be a place where food is actually served and
24 consumed and sleeping accommodations are offered for adequate
25 pay to travelers and guests, whether transient, permanent, or

1 residential, (b) in which twenty-five or more rooms are used for
2 the sleeping accommodations of such guests, and (c) which has one
3 or more public dining rooms where meals are served to such guests,
4 such sleeping accommodations and dining rooms being conducted in
5 the same buildings in connection therewith and such building or
6 buildings or structure or structures being provided with adequate
7 and sanitary kitchen and dining room equipment and capacity;

8 (21) Nonprofit corporation means any corporation
9 organized under the laws of this state, not for profit, which has
10 been exempted from the payment of federal income taxes;

11 (22) Minor means any person, male or female, under
12 twenty-one years of age, regardless of marital status;

13 (23) Brand means alcoholic liquor identified as the
14 product of a specific manufacturer;

15 (24) Franchise or agreement, with reference to the
16 relationship between a manufacturer and wholesaler, includes one or
17 more of the following: (a) A commercial relationship of a definite
18 duration or continuing indefinite duration which is not required
19 to be in writing; (b) a relationship by which the wholesaler is
20 granted the right to offer and sell the manufacturer's brands by
21 the manufacturer; (c) a relationship by which the franchise, as an
22 independent business, constitutes a component of the manufacturer's
23 distribution system; (d) a relationship by which the operation
24 of the wholesaler's business is substantially associated with
25 the manufacturer's brand, advertising, or other commercial symbol

1 designating the manufacturer; and (e) a relationship by which the
2 operation of the wholesaler's business is substantially reliant on
3 the manufacturer for the continued supply of beer;

4 (25) Territory or sales territory means the wholesaler's
5 area of sales responsibility for the brand or brands of the
6 manufacturer;

7 (26) Suspend means to cause a temporary interruption of
8 all rights and privileges of a license;

9 (27) Cancel means to discontinue all rights and
10 privileges of a license;

11 (28) Revoke means to permanently void and recall all
12 rights and privileges of a license;

13 (29) Generic label means a label which is not protected
14 by a registered trademark, either in whole or in part, or to
15 which no person has acquired a right pursuant to state or federal
16 statutory or common law;

17 (30) Private label means a label which the purchasing
18 wholesaler or retailer has protected, in whole or in part, by
19 a trademark registration or which the purchasing wholesaler or
20 retailer has otherwise protected pursuant to state or federal
21 statutory or common law;

22 (31) Farm winery means any enterprise which produces and
23 sells wines produced from grapes, other fruit, or other suitable
24 agricultural products of which at least seventy-five percent of the
25 finished product is grown in this state;

1 (32) Campus, as it pertains to the southern boundary of
2 the main campus of the University of Nebraska-Lincoln, means the
3 south right-of-way line of R Street and abandoned R Street from
4 10th to 17th streets;

5 (33) Brewpub means any restaurant or hotel which produces
6 on its premises a maximum of ten thousand barrels of beer per year;

7 (34) Manager means a person appointed by a corporation to
8 oversee the daily operation of the business licensed in Nebraska. A
9 manager shall meet all the requirements of the act as though he or
10 she were the applicant, except for residency and citizenship;

11 (35) Shipping license means a license granted pursuant to
12 section 53-123.15;

13 (36) Sampling means consumption on the premises of a
14 retail licensee of not more than five samples of one fluid ounce or
15 less of alcoholic liquor by the same person in a twenty-four-hour
16 period;

17 (37) Microbrewery means any small brewery producing a
18 maximum of ten thousand barrels of beer per year;

19 (38) Craft brewery means a brewpub or a microbrewery;

20 (39) Local governing body means (a) the city council or
21 village board of trustees of a city or village within which the
22 licensed premises are located or (b) if the licensed premises are
23 not within the corporate limits of a city or village, the county
24 board of the county within which the licensed premises are located;
25 and

1 (40) Consume means knowingly and intentionally drinking
2 or otherwise ingesting alcoholic liquor.

3 Sec. 2. Section 53-123.04, Reissue Revised Statutes of
4 Nebraska, is amended to read:

5 53-123.04 (1) A retail license shall allow the licensee
6 to sell and offer for sale at retail either in the original
7 package or otherwise, as prescribed in the license, on the premises
8 specified in the license or on the premises where catering is
9 occurring, alcoholic liquor or beer for use or consumption but not
10 for resale in any form except as provided in section 53-175.

11 (2) Nothing in the Nebraska Liquor Control Act shall
12 prohibit a holder of a Class D license from allowing the sampling
13 of tax-paid wine for consumption on the premises by such licensee
14 or his or her employees in cooperation with a licensed wholesaler
15 in the manner prescribed by the commission.

16 (3)(a) A restaurant holding a license to sell alcoholic
17 liquor at retail for consumption on the licensed premises may
18 permit a customer to remove one unsealed bottle of wine for
19 consumption off the premises if the customer has purchased a
20 full-course meal and consumed a portion of the bottle of wine with
21 such full-course meal on the licensed premises. The licensee or his
22 or her agent shall (i) securely reseal such bottle and place the
23 bottle in a bag designed so that it is visibly apparent that the
24 resealed bottle of wine has not been opened or tampered with and
25 (ii) provide a dated receipt to the customer and attach to such bag

1 a copy of the dated receipt for the resealed bottle of wine and the
2 full-course meal.

3 (b) If the resealed bottle of wine is transported in a
4 motor vehicle, it must be placed in the trunk of the motor vehicle
5 or the area behind the last upright seat of such motor vehicle if
6 the area is not normally occupied by the driver or a passenger and
7 the motor vehicle is not equipped with a trunk.

8 (c) For purposes of this subsection, full-course meal
9 means a diversified selection of food which is ordinarily consumed
10 with the use of tableware and cannot conveniently be consumed while
11 standing or walking.

12 Sec. 3. Section 53-123.11, Reissue Revised Statutes of
13 Nebraska, is amended to read:

14 53-123.11 (1) A farm winery license shall entitle the
15 holder to:

16 (a) Sell wines produced at the farm winery onsite at
17 wholesale and retail and to sell wines produced at the farm winery
18 at off-premises sites holding the appropriate retail license;

19 (b) Sell wines produced at the farm winery at retail for
20 consumption on the premises;

21 (c) (i) Permit a customer to remove one unsealed bottle of
22 wine for consumption off the premises. The licensee or his or her
23 agent shall (A) securely reseal such bottle and place the bottle
24 in a bag designed so that it is visibly apparent that the resealed
25 bottle of wine has not been opened or tampered with and (B) provide

1 a dated receipt to the customer and attach to such bag a copy of
2 the dated receipt for the resealed bottle of wine.

3 (ii) If the resealed bottle of wine is transported in a
4 motor vehicle, it must be placed in the trunk of the motor vehicle
5 or the area behind the last upright seat of such motor vehicle if
6 the area is not normally occupied by the driver or a passenger and
7 the motor vehicle is not equipped with a trunk;

8 ~~(e)~~ (d) Ship wines produced at the farm winery by common
9 carrier and sold at retail to recipients in and outside the State
10 of Nebraska, if the output of such farm winery for each calendar
11 year as reported to the commission by December 31 of each year
12 does not exceed thirty thousand gallons. In the event such amount
13 exceeds thirty thousand gallons, the farm winery shall be required
14 to use a licensed wholesaler to distribute its wines for the
15 following calendar year, except that this requirement shall not
16 apply to wines produced and sold onsite at the farm winery pursuant
17 to subdivision (1) (a) of this section; and

18 ~~(d)~~ (e) Allow sampling of the wine at the farm winery and
19 at one branch outlet in the state in reasonable amounts.

20 (2) No farm winery shall manufacture wine in excess of
21 fifty thousand gallons per year.

22 (3) A holder of a farm winery license may obtain a
23 special designated license pursuant to section 53-124.11.

24 (4) A holder of a farm winery license may obtain an
25 annual catering license pursuant to section 53-124.12.

1 Sec. 4. Section 53-124.11, Reissue Revised Statutes of
2 Nebraska, is amended to read:

3 53-124.11 (1) The commission may issue a special
4 designated license for sale or consumption of alcoholic liquor at a
5 designated location to a retail licensee, a craft brewery licensee,
6 a farm winery licensee, a municipal corporation, a fine arts museum
7 incorporated as a nonprofit corporation, a religious nonprofit
8 corporation which has been exempted from the payment of federal
9 income taxes, a political organization which has been exempted
10 from the payment of federal income taxes, or any other nonprofit
11 corporation the purpose of which is fraternal, charitable, or
12 public service and which has been exempted from the payment of
13 federal income taxes, under conditions specified in this section.
14 The applicant shall demonstrate meeting the requirements of this
15 subsection.

16 (2) No retail licensee, craft brewery licensee, farm
17 winery licensee, organization, or corporation enumerated in
18 subsection (1) of this section may be issued a special designated
19 license under this section for more than six calendar days in any
20 one calendar year. Only one special designated license shall be
21 required for any application for two or more consecutive days. This
22 subsection shall not apply to any holder of a catering license.

23 (3) Except for any special designated license issued
24 to a holder of a catering license, there shall be a fee of
25 forty dollars for each day identified in the special designated

1 license. Such fee shall be submitted with the application for
2 the special designated license, collected by the commission, and
3 remitted to the State Treasurer for credit to the General Fund.
4 The applicant shall be exempt from the provisions of the Nebraska
5 Liquor Control Act requiring a registration fee and the provisions
6 of the act requiring the expiration of forty-five days from
7 the time the application is received by the commission prior to
8 the issuance of a license, if granted by the commission. The
9 retail licensees, craft brewery licensees, farm winery licensees,
10 municipal corporations, organizations, and nonprofit corporations
11 enumerated in subsection (1) of this section seeking a special
12 designated license shall file an application on such forms as
13 the commission may prescribe. Such forms shall contain, along
14 with other information as required by the commission, (a) the
15 name of the applicant, (b) the premises for which a special
16 designated license is requested, identified by street and number
17 if practicable and, if not, by some other appropriate description
18 which definitely locates the premises, (c) the name of the owner or
19 lessee of the premises for which the special designated license is
20 requested, (d) sufficient evidence that the holder of the special
21 designated license, if issued, will carry on the activities and
22 business authorized by the license for himself, herself, or itself
23 and not as the agent of any other person, group, organization,
24 or corporation, for profit or not for profit, (e) a statement
25 of the type of activity to be carried on during the time period

1 for which a special designated license is requested, and (f)
2 sufficient evidence that the activity will be supervised by persons
3 or managers who are agents of and directly responsible to the
4 holder of the special designated license.

5 (4) No special designated license provided for by this
6 section shall be issued by the commission without the approval of
7 the local governing body. The local governing body may establish
8 criteria for approving or denying a special designated license. The
9 local governing body may designate an agent to determine whether a
10 special designated license is to be approved or denied. Such agent
11 shall follow criteria established by the local governing body in
12 making his or her determination. The determination of the agent
13 shall be considered the determination of the local governing body
14 unless otherwise provided by the local governing body. For purposes
15 of this section, the local governing body shall be the city or
16 village within which the premises for which the special designated
17 license is requested are located or, if such premises are not
18 within the corporate limits of a city or village, then the local
19 governing body shall be the county within which the premises for
20 which the special designated license is requested are located.

21 (5) If the applicant meets the requirements of this
22 section, a special designated license shall be granted and issued
23 by the commission for use by the holder of the special designated
24 license. All statutory provisions and rules and regulations of the
25 commission that apply to a retail licensee shall apply to the

1 holder of a special designated license with the exception of such
2 statutory provisions and rules and regulations of the commission
3 so designated by the commission and stated upon the issued special
4 designated license, except that the commission may not designate
5 exemption of sections 53-180 to 53-180.07. The decision of the
6 commission shall be final. If the applicant does not qualify for a
7 special designated license, the application shall be denied by the
8 commission.

9 (6) A special designated license issued by the commission
10 shall be mailed or delivered to the city, village, or county clerk
11 who shall deliver such license to the licensee upon receipt of any
12 fee or tax imposed by such city, village, or county.

13 Sec. 5. Section 53-124.12, Reissue Revised Statutes of
14 Nebraska, is amended to read:

15 53-124.12 (1) The holder of a license to sell alcoholic
16 liquor at retail issued under subdivision (5) of section 53-124,
17 ~~or a craft brewery license,~~ or a farm winery license may obtain an
18 annual catering license as prescribed in this section. The catering
19 license shall be issued for the same period and may be renewed in
20 the same manner as the retail license, ~~or craft brewery license,~~ or
21 farm winery license.

22 (2) Any person desiring to obtain a catering license
23 shall file with the commission:

24 (a) An application in triplicate original upon such forms
25 as the commission prescribes; and

1 (b) A license fee of one hundred dollars payable to the
2 commission, which fee shall be returned to the applicant if the
3 application is denied.

4 (3) When an application for a catering license is filed,
5 the commission shall notify, by registered or certified mail,
6 return receipt requested with postage prepaid, (a) the clerk of the
7 city or incorporated village in which such applicant is located or
8 (b) if the applicant is not located within a city or incorporated
9 village, the county clerk of the county in which such applicant is
10 located, of the receipt of the application. The commission shall
11 enclose with such notice one copy of the application. The local
12 governing body and the commission shall process the application in
13 the same manner as provided in section 53-132.

14 (4) The local governing body with respect to catering
15 licensees within its liquor license jurisdiction as provided in
16 subsection (5) of this section may cancel a catering license for
17 cause for the remainder of the period for which such catering
18 license is issued. Any person whose catering license is canceled
19 may appeal to the district court of the county in which the local
20 governing body is located.

21 (5) For purposes of this section, local governing body
22 means (a) the governing body of the city or village in which the
23 catering licensee is located or (b) if such licensee is not located
24 within a city or village, the governing body of the county in which
25 such licensee is located.

1 (6) The local governing body may impose an occupation tax
2 on the business of a catering licensee doing business within the
3 liquor license jurisdiction of the local governing body as provided
4 in subsection (5) of this section. Such tax may not exceed double
5 the license fee to be paid under this section.

6 Sec. 6. Section 60-6,211.08, Reissue Revised Statutes of
7 Nebraska, is amended to read:

8 60-6,211.08 (1) For purposes of this section:

9 (a) Alcoholic beverage means (i) beer, ale porter, stout,
10 and other similar fermented beverages, including sake or similar
11 products, of any name or description containing one-half of one
12 percent or more of alcohol by volume, brewed or produced from malt,
13 wholly or in part, or from any substitute therefor, (ii) wine of
14 not less than one-half of one percent of alcohol by volume, or
15 (iii) distilled spirits which is that substance known as ethyl
16 alcohol, ethanol, or spirits of wine in any form, including all
17 dilutions and mixtures thereof from whatever source or by whatever
18 process produced. Alcoholic beverage does not include trace amounts
19 not readily consumable as a beverage;

20 (b) Highway means a road or street including the entire
21 area within the right-of-way;

22 (c) Open alcoholic beverage container, except as provided
23 in subsection (3) of section 53-123.04 and subdivision (1)(c) of
24 section 53-123.11, means any bottle, can, or other receptacle:

25 (i) That contains any amount of alcoholic beverage; and

1 (ii) (A) That is open or has a broken seal or (B) the
2 contents of which are partially removed; and

3 (d) Passenger area means the area designed to seat the
4 driver and passengers while the motor vehicle is in operation and
5 any area that is readily accessible to the driver or a passenger
6 while in their seating positions, including any compartments in
7 such area. Passenger area does not include the area behind the last
8 upright seat of such motor vehicle if the area is not normally
9 occupied by the driver or a passenger and the motor vehicle is not
10 equipped with a trunk.

11 (2) It is unlawful for any person in the passenger area
12 of a motor vehicle to possess an open alcoholic beverage container
13 while the motor vehicle is located in a public parking area or on
14 any highway in this state.

15 (3) Except as provided in section 53-186, it is unlawful
16 for any person to consume an alcoholic beverage (a) in a public
17 parking area or on any highway in this state or (b) inside a motor
18 vehicle while in a public parking area or on any highway in this
19 state.

20 Sec. 7. Original sections 53-103, 53-123.04, 53-123.11,
21 53-124.11, 53-124.12, and 60-6,211.08, Reissue Revised Statutes of
22 Nebraska, are repealed.

23 Sec. 8. The following section is outright repealed:
24 Section 53-167.04, Reissue Revised Statutes of Nebraska.